GEORGE VINCENT McMAHON

IBLA 82-63 Decided November 27, 1981

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC 7783 and N MC 7884.

Affirmed, as modified

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

   Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Mining Claims: Recordation

   A copy of the official record of the evidence of assessment work for a mining claim must be delivered to and received by the proper office of the Bureau of Land Management on or before Dec. 30 of each calendar year in order to be timely filed. Depositing a document in the mails does not constitute filing.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: George Vincent McMahon, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

George Vincent McMahon appeals the August 18, 1981, decision of the Nevada State Office, Bureau of Land Management (BLM), which declared the unpatented Lamar and Half Sole lode mining claims, N MC 7783 and N MC 7784, abandoned and void because no notice of intention to hold the claims or evidence of assessment work performed on the claims was filed with BLM by December 30, 1978, and 1979, as required by 43 CFR 3833.2. These claims were located February 17, 1931, and December 26, 1930 respectively.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires the owner of an unpatented mining claim located prior to October 21, 1976, in addition to filing with BLM a copy of the official record of the notice of location, to file with BLM a copy of evidence of the assessment work performed on the claim or a notice of intention to hold the claims within 3 years after the date of the Act, i.e., on or before October 22, 1979, and before December 31 of each calendar year thereafter. The statute also provided that failure to file such instruments within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. 43 U.S.C. § 1744(c) (1976). The statutory requirements and consequences are set forth in 43 CFR 3833.1-2, 3833.2-1, and 3833.4. The BLM decision erred in setting forth the dates on which the proofs of labor had been due for recordation with BLM. As the claims were located before October 21, 1976, the first proof of labor required by FLPMA to be filed with BLM was to be filed on or before October 22, 1979. See Harvey A. Clifton, 60 IBLA 29 (1981).

Appellant states that he has performed assessment work each year since 1948, and that he obtained full title to the claims in 1958. Recorded proof of the assessment work has been filed with the Recorder

of Pershing County, Nevada, each year. He asserted that copies of the proof of labor for 1978 and 1979 were transmitted to BLM in November and December of these respective years. Copies of the recorded proofs of labor for the years 1975 through 1981 were submitted with the appeal. He suggested that his proofs of labor for the years in question may have been removed from the case files, but he offered no proof to substantiate the allegation.

[2] Despite appellant's statement that the documents were properly and timely mailed to BLM, the regulations define "file" to mean "being received and date stamped by the proper BLM office," 43 CFR 3833.1-2(a). Thus, even though the documents had been mailed and negligence by the Postal Service may have prevented them from reaching BLM timely or at all, that fact would not excuse appellant's failure to comply with the cited regulations. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). This Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of untimely delivery or no delivery of his filings. Edward P. Murphy, 48 IBLA 211 (1981); Everett Yount, supra; Amanada Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

The presumption of regularity supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties. E. M. Koppen, 36 IBLA 379 (1978); Amoco Production Co., 16 IBLA 215 (1974). Thus, where the employee charged with administration of the mining claim recordation program states positively that there is no record of the receipt of certain instruments, the burden of showing that the documents were received by BLM is strictly upon the mining claimant. No evidence of receipt of these proofs of labor has been presented in this case.

[3] Section 314 of FLPMA, supra, specifies that the owner of a pre-FLPMA unpatented mining claim must file evidence of assessment work or a notice of intention to hold the claim on or before October 22, 1979, and prior to December 31 of each calendar year thereafter. Such filing must be made in both the office where the notice of location is recorded, i.e., the county recorder's office, and in the proper office of BLM. These are separate and distinct requirements. Compliance with the one does not constitute compliance with the other. Accomplishment of recording in the proper county of evidence of assessment work, or of a notice of intention to hold the mining claim, does not relieve the owner of the claim from recording a copy of the instrument in the proper office of BLM under FLPMA and the implementing regulations. Johannes Soyland, 52 IBLA 233 (1981). The filing requirements of section 314, FLPMA, supra, are mandatory, not discretionary. Failure to comply is a conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Fahey Group Mines, Inc., 58 IBLA 381

(1981); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellant. This Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, supra. As the Board stated in Lynn Keith, supra,

> [t]he conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed, as modified.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge